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No. _____

OFFICE OF THE CLERK

In The Supreme Court of the United States

October Term 1997

INEZ BROWN CROUCH; RONALD S. GARMON; RONALD H. MIDDLETON, SR.; JOHN C. MIZZELL; JOAN M. SOOY; ANN V. PADGETT; WILLIAM C. WILDER; JERRY LEE RICHARDSON; PARRIS L. WILLIAMS; JOHN DOE, an individual affected by the re-zoning; TOWN OF JAMES ISLAND;

Petitioners,

v.

SECRETARY OF STATE, in his official capacity,

Respondent.

and

CITY OF CHARLESTON; ROBERT B. KIZER,
Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

Under the *Rooker-Feidman* doctrine, did the district court have subject matter jurisdiction over this action when:

(1) these petitioners have never had a full and fair opportunity to assert their federal statutory and constitutional claims; and

(2) the issues raised by these petitioners are not inextricably intertwined, but, rather, are separable and collateral to, the issues decided by the South Carolina Supreme Court?

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Inez Brown-Crouch, Ronald S. Garmon, Ronald H. Middleton, Sr., John C.Mizzell, Joan M. Sooy, Anne V. Padgett, William G. Wilder, Jerry Lee Richardson and John Doe, an individual affected by a rezoning decision and the Town of James Island respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinions of the court of appeals (App.1 , *infra*) are unreported, as is the opinion of the district court. (App.11, *infra*).

JURISDICTION

The court of appeals entered its judgment on August 5, 1997 (App.1, *infra*,) On September 9, 1997, it denied the petitioners' request for rehearing (App.19, *infra*,).

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1257 provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is

> specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

The Fifth Amendment to the United States Constitution states, in pertinent part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

The Fourteenth Amendment to the United States Constitution states, in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

The petitioners brought this case pursuant to 42 U.S.C. §§ 1973 and 1983. Subject matter jurisdiction in the lower court was based on 28 U.S.C. §§ 1331 and 1343(a)(3).

On June 25, 1992, qualified persons residing in the unincorporated portions of James Island, a barrier island in South Carolina, filed a petition with the South Carolina Secretary of State pursuant to S.C.Code Ann. §5-1-40 (1976), seeking to incorporate the Town of James Island, South Carolina, as a municipality. On December 1, 1992, an election was held on whether the area of James Island, as set forth on the petition, should be incorporated as a municipality. Incorporation was approved by majority of the voters.

On December 17, 1992, three individuals, and the neighboring City of Charleston filed a lawsuit in the state courts of South Carolina, *Glaze, et. al. v Grooms, et. al.*,

Case No. 92-CP-10- 5258, (Charleston County Court of Common Pleas)(hereinafter referred to as *Glaze*) seeking to enjoin the March 2, 1993 municipal election for Mayor and Council for the Town of James Island on the grounds that such an event would activate the powers of the municipality under the already-issued certificate of incorporation. The defendants in that suit were the Town and the Secretary of State. On January 8, 1993, despite the lawsuit, the Secretary of State issued a charter to the Town of James Island. Though the state trial court initially issued a preliminary injunction staying the election, the South Carolina Supreme Court granted supersedeas, allowing the election to be held as scheduled and, thereby, under the incorporation statute, allowing the Town of James Island to come into existence and begin to exercise the powers and duties of an incorporated municipality.

Three years later, the South Carolina Supreme Court issued a decision affirming a trial court determination that contiguity was an implied, though not express, condition of the South Carolina statute governing incorporations and that, since the areas that made up the Town of James Island were not contiguous. the incorporation of James Island was null and void.

These petitioners, individual citizens who were not parties to the state court suit, filed this action under 42 U.S.C.§§ 1983 and 1973, against the Secretary of State of South Carolina, seeking declaratory and injunctive relief. The complaint sought both a declaration that a dissolution of the Town of James Island was, after an election and two years of operation, an abridgement of their federal statutory and constitutional rights, and an injunction barring any such dissolution.

Within five days of filing the Complaint, the district court granted a temporary restraining order (hereafter TRO) to preserve the *status quo*. The motion for a preliminary injunction was set for a hearing on January 13, 1997. That

day, the district court heard oral argument and, later in the afternoon, ruled from the bench. The court, in its oral decision announced from the bench, declined to rule on the motion for preliminary relief, which was the only motion before it, but rather, on its own motion, dismissed the case for lack of jurisdiction, based on the *Rooker-Feldman* doctrine.

REASONS FOR GRANTING THE PETITION

This Court needs to clarify the meaning and the reach of the *Rooker-Feldman* doctrine. In *District of Columbia Court of Appeals v Feldman* 460 U.S. 462 (1983) (hereafter, *Feldman*), Justice Brennan extended the rule of *Rooker v Fidelity Trust*, 263 U.S. 413 (1923)(hereafter, *Rooker*) that prohibited appeals from state court appellate tribunals to federal district courts to also bar claims or parties "inextricably intertwined" with a final decision in the highest court of a state from filing a challenge in federal district court. That doctrine has been cited with increasing frequency over the past several years[1] and is now being used to deny citizens access to the federal courts, even when those citizens had not been before the state court and would not have been barred by traditional claim preclusion doctrines from filing that case.

Such is the case here. The defendant in the state court decision, the Town of James Island, has no right to vote. These petitioners do. The dissolution of the town after a certified popular election abridged their right to vote.

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[1] A computerized search of the Federal Reporter reveals that the courts of appeals have been citing *Rooker-Feldman* with exponential frequency. It is not cited from 604-712 F.2d; it is cited four times from 713-807 F.2d; it is cited 19 times from 808-892 F.2d and from 893-969 F.2d; it is cited 41 times from 970 F.2d-38 F.2d; and, most recently, it has been cited 98 times from 39-110 F.3d.

Further, the petitioners have never sought, in any pleading or memoranda, to overturn the ruling in *Glaze*. Nevertheless, they have been denied access to the federal courthouse based on the "inextricably intertwined" language of the *Rooker-Feldman* doctrine.

Justice Brennan further refined that standard when he stated, in *Texaco v Pennzoil*, 481 U.S. 1 (1987), (hereafter, *Texaco*) that when issues and parties are "separable from and collateral to" a state court decision, they are not "inextricably intertwined" with it and do not run afoul of *Rooker-Feldman*. That distinction, apparently, has not been understood or heeded by the district and circuit courts. It needs to be stated clearly, in this case, to prevent *Rooker-Feldman* from being used to deny citizens such as these entry into the federal courts to safeguard their federal rights, merely because the subject matter of their grievance can be linked to a prior state court decision.

I. The Court of Appeals denied these citizens access to the federal courts based on *Rooker-Feldman* when they had not been parties to prior litigation and could never have had their claims heard in any forum.

The petitioners in this case, Brown-Crouch, Garmon, Middleton, Mizzell, Sooy, Padgett, Wilder and Richardson are citizens and voters who live within the incorporated boundaries of the Town of James Island. These individuals were not parties to the *Glaze* case. In *Glaze*, the Town and the Secretary of State were defendants in a suit brought by other citizens and the City of Charleston, challenging incorporation. The individual plaintiffs were not sued in *Glaze* and had no privities in the suit. Brown-Crouch, Garmon, Middleton, Padgett, Wilder and Richardson held no official position in the Town government; they were simply citizens who voted, with a majority of their neighbors, to become a Town.

Rooker-Feldman cannot bar an action when such a bar would deny due process. Preventing parties who have not had a full and fair opportunity to assert their claims from bringing this action in federal court deprives them of due process and acts as a bar to litigation even more stringent than that required by the law of preclusion in South Carolina. If this case were brought in state court, neither collateral estoppel nor res judicata would bar it.

Despite the court of appeal's assertions, these petitioners have never had the opportunity to raise these challenges. Due process requires that a federal court action could not be "inextricably intertwined" with a state decision when the parties in the federal case were not given a full and fair opportunity to litigate their claims in the state court litigation. These plaintiffs have never been given such an opportunity and *Rooker-Feldman* is no bar to them. Again, the courts of appeal, without clear guidance from this Court on the meaning of "inextricably intertwined" has misapplied that language to exclude citizens from access to the courts where such is not mandated by the statute or required by the doctrine.

Much of the court of appeal's opinion, from the very first sentence, presumes that the appellants were disappointed litigants in the state supreme court looking for a second bite at the apple. That is not so. The Town, a defendant in *Glaze*, did join in this Complaint, stating its own, particularized, cause of action. Much of the Complaint, however, consists of the constitutional and statutory causes of action of these petitioners who were not parties in *Glaze*, who have not lost in any court, and are appearing in court raising these claims for the first time.

These petitioners raise constitutional and statutory claims that did not arise until *Glaze* prompted a dissolution of the Town. They could not have raised their claims in front of the state court. The individual plaintiffs were not parties. None of these plaintiffs, including the Town had

constitutional claims which were ripe until the *Glaze* decision was rendered. In *Glaze*, the state supreme court, for the first time, imposed an implied requirement of geographic contiguity on the incorporation statute.

These appellants are unlike the patients in *Guess v. Board of Medical Examiners*, 967 F.2d 998 (4th Cir. 1992) cited by the Court. In relying on *Guess*, the Court overlooked the fact that these petitioners' rights are not derivative of the Town's, as the patients' were of the doctor's in *Guess*. They are not asserting the Town's rights: these rights, such as voting, due process, and property belong to these individual citizens, not to the Town. The Town could never have raised them.

This Court should use this case to resolve the confusion among the lower federal courts and expressly state that *Rooker-Feldman*, if not a direct application of res judicata, at least indicates that jurisdictional "inextricably intertwined" is no broader than "full and fair opportunity to litigate." *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984) This court should adopt the language of *Wood*, which held that *Rooker-Feldman* can only apply to issues that the plaintiff had a reasonable opportunity to raise in the concluded state court case. "[I]nterpreting *Rooker* to preclude a federal district court from considering an issue that the plaintiff had no reasonable opportunity to raise in state court might pose due process problems. Such a harsh rule might deprive the plaintiff of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, a result arguably contrary to the requirements of due process." *Wood*, 715 F.2d at 1547. See also, *Robinson v Ariyoshi*, 753 F.2d 1468, 1472 (9th Cir. 1985), *vacated and reversed on other grounds*, 477 U.S. 902 (1986)(the res judicata requirement of "full and fair opportunity to litigate" and *Rooker-Feldman*'s "inextricably intertwined" are two sides of the same coin). The "crux of the question" in either

inquiry is whether the state court has undertaken "consideration" and "decision." If it has, then there is inextricable intertwining and "action in federal court is an impermissible "appeal" from the state court decision"; if not, "it is unlikely that the issues presented to the state high court and to the federal court are so "inextricably intertwined that the federal court cannot take jurisdiction." *Id.* The Fourth Circuit's decision here conflicts with the interpretation of the doctrine given in other circuits.

This court needs to make it clear that *Rooker-Feldman* applies where federal and state claims are "inextricably intertwined" with state court claims that **the plaintiff actually raised or had a reasonable opportunity** to raise in state court. *Accord*, *Marks v. Stinson*, 19 F.3d 873, 885-886 n.11 (3d Cir. 1994)(*Rooker-Feldman* did not bar federal jurisdiction of an action claiming voter fraud; issues were not determined by the state court, nor were they intertwined with issues decided in state court; court was "not faced with situation where it was asked to review a determination of the state court."); *Worldwide Church of God v. McNair*, 805 F.2d 888, 892 (9th Cir. 1986)(*Robinson* used res judicata concepts to clear up ambiguity surrounding scope of "inextricably intertwined"); *Gauthier v Continental Diving Services*, 831 F.2d 559, 561 (5th Cir. 1987)("We decline to apply *Rooker-Feldman* in a way that would require a federal court to give greater deference to a state court judgment than a court of the state in which it was rendered would give it.").

Nonparties to the state court litigation are simply not affected by the *Rooker-Feldman* jurisdictional bar. *Johnson v. DeGrandy*, 512 U.S. 997, 114 S.Ct. 2647, 2653-2654 (1994) held that *Rooker-Feldman* was not applicable to a nonparty to the state court decision. The Third Circuit has ruled, in a federal court election ballot challenge that had been decided previously in state court, that plaintiffs who were not parties to the earlier state court litigation were not

barred from bringing their claims in federal court by *Rooker-Feldman*. *Valenti v. Mitchell*, 962 F.2d 288, 296-298 (3d Cir. 1992). Likewise, in *In re Asbestos Litigation*, 829 F.2d 1233, 1237 (3d Cir. 1987) *Rooker-Feldman* could not be invoked where "[t]he parties to the cases at hand constitute different groups than those in the challenged state court litigation, and hence neither res judicata nor the law of the case principles apply."

Here, using the "inextricably intertwined" language, the court of appeals failed to examine the nature of the claims of these plaintiffs and whether these plaintiffs had an opportunity to have an adjudication of these claims in the prior state court litigation. The filings, including affidavits in the district court at the time it dismissed the case demonstrate conclusively that these plaintiffs, who, with the exception of the Town, were not parties to the *Glaze* case, had not had a full and fair opportunity, as required by *Rooker-Feldman* and the rules of preclusion for South Carolina, to litigate their claims.

This error has been identified by leading commentators on federal practice as a threat posed by treating *Rooker-Feldman*, which is essentially a res judicata principle, as jurisdictional:

> A jurisdictional approach is an open invitation to apply federal rules of preclusion without careful thought as to the content of state rules or any possible justifications for ignoring them. Jurisdictional perspectives might expand the number of persons affected by the judgment, and cause confusion as to the effects of dismissing the federal action.
>
> 18 C.WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4469, at 666-67.

II. The Court of Appeals found that these petitioners' claims were "inextricably intertwined" with the state court decision, ignoring Justice Brennan's "separable from, but collateral to" distinction.

Justice Brennan did not define "inextricably intertwined" in *Feldman*. Courts interpreting *Feldman* used concepts derived from res judicata and procedural due process to apply the term. When given the chance in *Texaco*, Justice Brennan further clarified the term by providing a counterpart to distinguish between filing a federal action to protect a federal constitutional right (allowed by *Rooker-Feldman*) and challenging the merits of a state court suit (not allowed). *Texaco*, 481 U.S. at 21. (Brennan, concurring). That counterpart he described as "separable from and collateral to". *Id.* The inquiry turns on the purpose in bringing the federal action: if the purpose is separable and collateral to the state judgment then it is not inextricably intertwined merely because the action necessitates some consideration of the merits of the state judgment. *Texaco*, 481 U.S. at 22. Otherwise, review of unconstitutional state action which follows state court litigation might be immune from review, which is clearly not the intent of 42 U.S.C. § 1983 or cases such as *Mitchum v. Foster*, 407 U.S. 225 (1972).

This case is brought by individuals who were not before the court in *Glaze*, who assert constitutional and statutory rights violated by the Secretary of State's "decertification" of the town, after a series of popular elections, creating the town. The complaint seeks to enjoin the implementation of the dissolution of the Town by the Secretary of State, because of the way the mandate necessarily tramples on federally protected voting and other rights. It does not seek to reverse the supreme court decision. An award of the relief sought by these appellants would leave the *Glaze* decision intact; it would simply

prevent the State from implementing the decision in this case. The complaint is "separable from and collateral to" the issues decided in *Glaze*, since an award of the relief sought by these plaintiffs would leave the *Glaze* decision intact; it would simply prevent the State from implementing the decision in this case.

This distinction between the relief sought in the state court case and that sought in the federal action (in addition to identity of parties) distinguishes this case from other decisions such as *Guess v. Board of Medical Examiners*, 967 F.2d 998, 1002-1005 (4th Cir. 1992), *Czura v. Supreme Court*, 813 F.2d 644 (4th Cir. 1987) and *Ganey v. Barefoot*, 749 F.2d 1124 (4th Cir. 1984), *cert. denied* 472 U.S. 1019, in which the Court found that the plaintiff was merely seeking a review of the state court decision on the merits, not separate relief from that sought in state court.

In this case, the court of appeals failed to recognize this distinction. The court must have believed, despite the allegations and relief sought in the Complaint, that the plaintiffs desired a review of *Glaze* in this action. The Complaint is unambiguous, however, that an injunction prohibiting the dissolution of the Town of James Island, not a reversal of the *Glaze* court's interpretation of the incorporation statute, is the relief sought by these plaintiffs. The court of appeals erred, then, in ignoring this court's "separate by collateral to" distinction in finding that the relief sought by these plaintiffs was "inextricably intertwined" with the decision reached in *Glaze*.

This Court needs to take this opportunity to state clearly that *Rooker-Feldman* is not applicable where the nature of the underlying federal constitutional claim was predicated on the conviction that enforcement, not the decision of the state judgment, would be wrong. "There is a difference between asking a federal court to review the merits of a state court judgment and asking a federal court to enjoin procedures for enforcement of a state court judgment

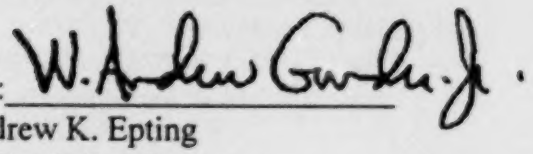
that allegedly denied the state court defendant due process and equal protection." Thompson, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42 Rutgers L.Rev. 859, 890 (1990). Accordingly, "Whenever the federal claim can stand on its own, "separable from and collateral to" the state decision, the federal district court may not refuse to acknowledge its original subject matter jurisdiction to hear the federal constitutional challenge, even if that challenge could have been raised in state court." *Id. Accord, Rhoades v Penfold*, 694 F.2d 1043, 1046-1047 (5th Cir. 1983) (action can be maintained under 1983 to enjoin enforcement of state judgment where relief sought was injunction, not review of substantive issues underlying the state judgment.)

In sum, the *Rooker-Feldman* doctrine which is being invoked with increasing frequency by the district courts and courts of appeals to dismiss federal actions needs to be clarified, since the vast majority of those cases are not direct appeals from state court, as is expressly prohibited by the statute, but are said to be "inextricably intertwined" with state court issues. This Court needs to limit the scope of *Rooker-Feldman* to prevent it from being used to deny access to federal courts to citizens who have federal rights to secure and who have never had a full and fair opportunity to raise them and to distinguish between seeking to reverse a state court decision and challenging the implementation of that decision that violates a citizen's federal rights. Therefore, the Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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No. _____

In The
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October Term 1997

INEZ BROWN CROUCH; RONALD S. GARMON; RONALD H. MIDDLETON, SR.; JOHN C. MIZZELL; JOAN M. SOOY; ANN V. PADGETT; WILLIAM C. WILDER; JERRY LEE RICHARDSON; PARRIS L. WILLIAMS; JOHN DOE, an individual affected by the re-zoning; TOWN OF JAMES ISLAND;

Petitioners,

v.

SECRETARY OF STATE, in his official capacity,

Respondent.

and

CITY OF CHARLESTON; ROBERT B. KIZER,
Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Appendix to Petition for Writ of Certiorari

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UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INEZ BROWN CROUCH; RONALD S. GARMON; RONALD H. MIDDLETON, SR.; JOHN C. MIZZELL; JOAN M. SOOY; ANN V. PADGETT; WILLIAM C. WILDER; JERRY LEE RICHARDSON; PARRIS L. WILLIAMS; JOHN DOE, an individual affected by the re-zoning decision; TOWN OF JAMES ISLAND,
Plaintiffs-Appellants,

No. 97-1118

v.

SECRETARY OF STATE, in his official capacity,
Defendant-Appellee,

and

CITY OF CHARLESTON; ROBERT B. KIZER,
Parties in Interest.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
Patrick Michael Duffy, District Judge.
(CA-96-3786-2-23)

Argued: May 7, 1997

Decided: August 5, 1997

Before RUSSELL and HALL, Circuit Judges, and
TRAXLER, United States District Judge for the
District of South Carolina, sitting by designation.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: William Andrew Gowder, Jr., PRATT-THOMAS, PEARCE, EPTING & WALKER, P.A., Charleston, South Carolina, for Appellants. Bruce Edward Miller, BARNWELL, WHALEY, PATTERSON & HELMS, L.L.C., Charleston, South Carolina, for Appellee. **ON BRIEF:** Andrew K. Epting, G. Trenholm Walker, Gregg Meyers, PRATT-THOMAS, PEARCE, EPTING & WALKER, P.A., Charleston, South Carolina, for Appellants. James E. Reeves, BARNWELL, WHALEY, PATTERSON & HELMS, L.L.C., Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

In this case we consider whether litigants who lost in state supreme court have a federal cause of action on the same facts. The district court dismissed the case for want of jurisdiction, and the plaintiffs below appeal.

I.

In 1992, some residents of James Island, an area near Charleston, South Carolina, filed a petition with the South Carolina Secretary of State, seeking to incorporate the area into a town. The South Carolina Secretary of State appointed a commission to conduct a referendum, and a majority of the residents of the area voted in favor of incorporation. The Town of James Island came into existence in January 1993 and began operations as a municipality. Opponents of the incorporation filed suit in state circuit court. They argued, inter alia, that the Town lacked the contiguity of area required for lawful incorporation. The state circuit court agreed, and declared the Town's incorporation invalid. In Glaze v. Grooms,[1] the Supreme Court of South Carolina affirmed the judgment.

The plaintiffs in this action then filed suit in federal district court to stop the dissolution of the town, claiming the dissolution would violate certain of their rights under the United States Constitution and federal statutes. They sued for declaratory and injunctive relief to stop the South Carolina Secretary of State from carrying out the mandate of the Glaze decision.[2]

The district court ruled that the plaintiffs were essentially seeking federal appellate review of the Glaze decision and that their constitutional claims were inextricably intertwined with claims in the state court proceeding. It dismissed the plaintiffs' action for lack of subject matter

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[1] 478 S.E.2d 841 (S.C. 1996), cert. denied, 117 S. Ct. 1848 (1997).

[2] We are unsure what the exact status of the Town is at this point, and what steps, if any, must be take to dissolve it. We do not need this information, however, to decide the case before us.

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jurisdiction, because federal courts may not review decisions of the highest court of a state.

The plaintiffs appeal the district court's dismissal of their suit. We review the district court's dismissal for lack of subject matter jurisdiction de novo.[3]

II.

Only the Supreme Court of the United States may review "[f]inal judgments or decrees rendered by the highest court of a State."[4] In the line of reasoning known as the Rooker-Feldman[5] doctrine, the Supreme Court has established that United States District Courts are "without authority to review final determinations" of state supreme courts.[6] Rooker-Feldman prevents district courts from entertaining cases that present challenges to state supreme court judgments that arise out of particular adjudications, although general challenges to state court action are permissible.[7]

Furthermore, even if a claim does not raise a challenge to a state court judgment, Rooker-Feldman may still deprive the district court of jurisdiction. "If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding [of the requested relief], then the district court is in

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3 Hager v. Gibson, 108 F.3d 35, 38 (4th Cir. 1997).

4 28 U.S.C.A. § 1257 (West 1993).

5 District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

6 Feldman, 460 U.S. at 476

7 See id. at 486. See also Stern v. Nix, 840 F.2d 208, 211 (3d Cir. 1988) (allowing general challenge to state bar rules promulgated by state court in nonjudicial proceeding).

essence being called upon to review the state-court decision. This it may not do."[8] In other words, if the appellants in this case were seeking to challenge a state court decision arising from a particularized adjudication, or if their federal claims were inextricably intertwined with the state-court proceedings, the district court was without subject matter jurisdiction and was required to dismiss the case.

The plaintiffs sought preliminary and permanent injunctions "preventing the Secretary of State from decertifying the Town," or requiring recertification if the Secretary had already decertified it. They also sought a declaratory judgment that decertification of the town would violate their constitutional rights, "and that the state court lacked subject matter jurisdiction" in the Glaze case. They also demanded the district court declare the Glaze decision"nonbinding and void as to these plaintiffs." Finally, they asked the district court to prevent the decertification of the town on the theory that decertification would violate the Voting Rights Act.[9]

A.

To the extent the plaintiffs sought injunctive relief preventing or reversing the implementation of the mandate of the Glaze decision, they were seeking federal review of that decision. If the district court had issued the requested injunction, that very act would have negated the decision of the state court in Glaze.

In Stern v. Nix,[10] an attorney was disbarred by the Pennsylvania Supreme Court following a hearing and oral

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8 Id. at 482 n.16.

9 42 U.S.C.A. § 1973 (West 1994).

10 840 F.2d 208 (3d Cir. 1988).

argument before that court. Dissatisfied with the result of his case, the attorney, Stern, initiated a case in federal court, claiming a "general challenge" to state court rules.[11] Looking beyond the pleadings, however, the Third Circuit found that Stern's request for a permanent injunction preventing his disbarment amounted to a particularized challenge to the Pennsylvania court order. The Third Circuit rejected Stern's appeal and ordered the case dismissed. It reasoned that "Stern's complaint [was] simply a skillful attempt to mask the true purpose of the action, which
essentially [was] to reverse the judicial decision of the Supreme Court of Pennsylvania, in contravention of Rooker-Feldman."[12]

Like Stern, the appellants in the instant case have mounted a challenge to a particularized state court adjudication. Federal district courts "do not have jurisdiction . . . over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional."[13]

We read the appellants' complaint in this case to seek reversal of the Glaze decision. Glaze ordered the decertification of the Town of James Island. The appellants asked the district court to prevent the decertification of the town so that it could continue to exist. This is nothing more than an attempt to overturn Glaze and is prohibited by Rooker-Feldman.

B.

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11 Id. at 211

12 Id. at 212.

13 Feldman, 460 U.S. at 486.

The appellants also sought federal court review on constitutional and statutory claims that the district court ruled were "inextricably intertwined" with the Glaze decision. We have noted that Rooker-Feldman extends to such matters, and we agree with the district court that the appellants presented inextricably intertwined claims. For example, Glaze ordered the decertification of the town based on the town's failure to satisfy the contiguity requirement of South Carolina law.[14] The plaintiffs now challenge the contiguity requirement on the basis that it is "not reasonable and necessary to carry out a legitimate government purpose." In Glaze, however, the court relied on case law from South Carolina, and implicitly upheld the contiguity requirement.[15]

Thus, the plaintiffs' challenge to the contiguity requirement would require the district court to examine Glaze, the underlying state court precedent,[16] and the South Carolina municipal incorporation statute.[17]

Therefore, the challenge is "inextricably intertwined" with the state court's judicial proceedings and cannot be heard in federal court.[18] The balance of the plaintiffs' challenges likewise fail.

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[14] Glaze, 478 S.E.2d at 843 n.4.

[15] Id. (citing Tovey v. City of Charleston, 117 S.E.2d 872 (S.C. 1961) (requiring contiguity of areas for incorporation)).

[16] Tovey, 117 S.E.2d 872.

[17] S.C. Code Ann. §§ 5-1-10 to 110 (Law. Co-op. 1977 & Supp. 1995).

[18] We also note that the South Carolina General Assembly is currently considering revising the incorporation statute to create and define a contiguity requirement. See H.B. 3986, 112th Sess. Gen. Assembly (S.C. introduced Apr. 10, 1997); S.B. 63, 112th Sess. Gen. Assembly (S.C. introduced Jan. 14, 1997) (adding contiguity requirement in S.C. Code.

III.

The appellants present two arguments that they contend will defeat the application of Rooker-Feldman to their lawsuit. We reject both of them.

A.

The plaintiffs in the instant case include some litigants from the state court action and new plaintiffs. These new plaintiffs argue that they must be afforded an opportunity to present their constitutional claims in federal court. They are wrong. In Guess v. Board of Medical Examiners,[19] we applied the Rooker-Feldman doctrine to the claims of a doctor whose license had been revoked by state authorities, and affirmed the district court's judgment that it lacked subject matter jurisdiction to hear the doctor's claims. Patients of the doctor sought injunctive relief in federal court that would have allowed the doctor to continue to treat them. We ruled that because the patients' claims were merely derivative of the doctor's claims, they were rendered moot by our application of the Rooker-Feldman doctrine.[20] Even though none of the plaintiffs had been parties to the doctor's original state court action, we reasoned that the patients"effectively [sought] to relitigate the claims of Guess that were previously decided and which this court ha[d] no jurisdiction to review."

Likewise, the new plaintiffs in this case seek review of the Supreme Court of South Carolina decision in Glaze. As

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Ann. § 5-1-30). It appears the proposed revisions would allow James Island to incorporate.

[19] 967 F.2d 998 (4th Cir. 1992).

[20] Id. at 1005.

discussed above, the district court had no jurisdiction to review the Glaze decision. The addition of new plaintiffs does not create jurisdiction.

B.

The appellants also argue that they are entitled to litigate in federal court any constitutional claims not considered in the state-court proceedings. The Supreme Court specifically addressed this contention in Feldman.[21] It criticized a Fifth Circuit decision allowing a plaintiff to present constitutional claims in federal district court even though the plaintiff failed to raise these claims in a previous adjudication by the Texas Supreme Court. The Court declared that "[b]y failing to raise his constitutional claims in state court a plaintiff may forfeit his right to obtain review of the state-court decision in any federal court.

This result is eminently defensible on policy grounds. We have noted the competence of state courts to adjudicate federal constitutional claims."[22] As in Feldman , the appellants here failed to raise their federal constitutional claims in the state court proceedings. They may not do so now in federal court.

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21 460 U.S. at 482 n.16.

22 Id. (citations omitted).

IV.

We find no error by the district court in applying the Rooker-Feldman doctrine, and affirm the judgment below.

AFFIRMED

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

INEZ BROWN-CROUCH; RONALD S. GARMAN; RONALD H. MIDDLETON, SR.; JOHN C. MIZZELL; JOAN M. SOOY; ANN V. PADGETT; WILLIAM C. WILDER; JERRY LEE RICHARDSON; PARRIS L. WILLIAMS, RE; JOHN DOE, an individual affected by the re-zoning decision; JAMES ISLAND, TOWN OF,

Plaintiffs,

vs.

STATE OF SOUTH CAROLINA; SECRETARY OF STATE, in his official capacity,

Defendants.

CITY OF CHARLESTON, SOUTH CAROLINA; ROBERT B. KIZER,

Intervenor- Defendant.

Civil Action No. 2:96-CV-3786

ORAL ORDER OF
JUDGE DUFFY

Entered: January 13, 1997
Charleston, SC

HEARING HELD BEFORE
THE HONORABLE P. MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording done by Ruth NiElson, E.S.R.; transcript produced by Gail Rubinstein, Transcriptionist, 26 Fieldfare Way, Charleston, SC 29414, 556-2354.

(The oral order by Judge Duffy commences at 4:18 p.m.)

THE COURT: Thank you very much. Please be seated. I apologize for being late. Mr. Epting faxed in a few more cases so I looked at those before we started.

First of all, let me thank the lawyers and the parties for the courtesy shown the Court. I appreciate the good briefs and the timeliness of them and the arguments were very clear. In as difficult a situation as I'm faced with, that made it a little bit easier and I appreciate it.

The plaintiffs here seek to enjoin the Secretary of State from applying, however, that would be done, the recent ruling of the South Carolina Supreme Court in Glaze versus Grooms, that the Town of James Island was not to be recognized as an incorporated municipality; that is, in fact, that it's a nullity. The Court has read the briefs and the cases cited by the parties and I've considered each of those before reaching a decision in this matter. The plaintiffs assert that the Court has jurisdiction over the case because plaintiff brings causes of actions under the Voters' Rights Act, that's 42 USC 1973 and Section 1983. The defendants argue that that position is flawed largely because of the Rooker-Feldman doctrine, based on 28 USC 1257, which provides that final judgments of the highest court of a state in which a decision could be had may be reviewed by the United States Supreme Court by writ of certiorari. Further, the defendant argues that the United States Supreme Court has held that if constitutional claims presented to the U.S. District Court are inextricably entwined with the state court's denial in a judicial proceeding, then the district court is, in essence, being called upon to review the state court decision. This

district court may not do so according to that law. The United States Supreme Court in the Feldman case, which was much discussed here today, further held that the Fourth Circuit ruling in that case was flawed where that court held that a 1983 action did not constitute an impermissible effort to seek review of a state court judgment in a lower federal court. And, indeed, later, in the case of Keen Corp. versus Katz, the Eighth Circuit held that the jurisdictional bar of Feldman applied to a Section 1983 case. In order to distinguish the two cases, the plaintiffs argue that some of the plaintiffs were not involved in the Glaze case, to which the defendants here have replied that the issues are the same and that res adjudicata would preclude them from being re-litigated in this matter. The Fourth Circuit, again, in Feldman, held that Feldman clearly precluded the district court from rehearing a particularized adjudication as it's defined in that case and that only a general challenge to the statute is permitted. Citing other cases from the Fourth Circuit, Guess versus Board of Medical Examiners and Zurro versus Supreme Court of South Carolina, it is conceded in this case that the plaintiffs have not challenged the constitutionality of South Carolina Code Section 5-130 upon which the South Carolina Supreme Court based its ruling. The plaintiffs have eloquently argued that the Rooker-Feldman doctrine and others, such as, the Hunter versus Pittsburgh doctrine, are not controlling in this case. I think it's helpful, however, to refer to the language of the Court in the Hunter case, Hunter versus Pittsburgh. The Court said, in that case, that municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. It went on to say the state therefore, at its pleasure, may modify or withdraw all such power, may take without compensation such property, hold itself or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another

municipality, repeal the charter and destroy the corporation. All this may be done conditionally or unconditionally, with or without the consent of the citizens or even against their protest. Thus, the individual plaintiffs as citizens in this case, have no constitutional right to the continued existence of the Town. The Fourth Circuit recently stated in Stanley versus the Darlington County School District, the state's sovereign powers to create, abolish and fund political subdivisions are not constrained by the 14th Amendment. The political subdivision is not a person protected by the amendment. Plaintiff's allegation that the Secretary of State as an executive officer must therefore -- must act before the opinion of the Supreme Court of South Carolina is effective, that being of course the representative of the judicial branch, violates the doctrine of the separation of powers in the Court's opinion, which is, of course, one of the key principles under which we operate in this republic. This Court lacks the required subject matter jurisdiction for this action and therefore, I will not and cannot issue a preliminary injunction in this case. The United States District Court has no authority to exercise appellate jurisdiction over nor may it overrule on collateral attack the opinions of the State of South Carolina's courts, particularly the South Carolina Supreme Court. When, as here, the constitutional claims presented to the Court are, as I said, inextricably entwined with those in the state's judicial proceeding, then the district court, in essence, is being called upon to review the state court decision. I understand that the plaintiff argued long and hard and eloquently that these issues are not inextricably entwined; I simply disagree with that. I think it's inescapable that they are inextricably entwined. The Rooker-Feldman doctrine applies to claims for both injunctive and declaratory relief and regardless of whether or not the state court action is final or the proceedings in the state are still going on. Thus, if the plaintiffs are unhappy with the resolution in the prior case, their relief is to be sought from

the United States Supreme Court as opposed to this Court. The plaintiffs cannot set aside Rooker-Feldman doctrine by adding additional plaintiffs or changing the style of the pleadings. It's the nature and effect of the litigation that's controlling not how the pleadings are crafted. And Feldman so held and William versus Atkinson, and later affirmed by the Eleventh Circuit so held, the fact that the particular plaintiff was, technically speaking, not a party in the state court action is no defense or method for circumvention of the jurisdictional bar. The plaintiffs in the present action had a reasonable opportunity to raise their claims in the state court and they're unable, based on our system of federalism, to come now in federal court seeking relief from that decision. As I've stated, I think that I simply have to reject the argument that these issues aren't inextricably entwined with those in the Glaze case. I would also state that I have to disagree with the characterization that this is not a direct attack on the state supreme court's decision. I think it's inescapable that it is an attack at the very heart of that decision. In the Glaze action, the plaintiffs chose a forum of the courts of the State of South Carolina and all the parties to that action and now to this action have to live with that choice. The United States Supreme Court has consistently held that the district court does not sit as an appellate court to the courts of our fifty states. This is a basic principle of our republic and it goes way beyond the squabble that might exist among the parties in this courtroom or the Town of James Island or the City of Charleston; it's one that's an issue between the federal government and the State of South Carolina. And for that reason I'm simply unable to grant the relief requested. I do so without reaching the merits of the case, I've not entered into the balancing requirement required for the issuance of a preliminary injunction, I make no findings in regards to prejudice on either side should that interest be waived. I simply think that it would be inappropriate and presumptuous at least for me to tell the

Supreme Court of South Carolina what the law of South Carolina is and how to apply it. And without sounding flippant, it would almost be like my telling Mr. Webster how to use his dictionary and I don't presuppose to do so. I think that that is as far as the Court needs go on the relief requested and I don't intend to make any other findings. I think that for purposes of appeal, either to the Fourth Circuit on this decision or whatever other actions the parties may have in mind, you have a sufficient record to make that appeal or take any other actions that are necessary if in fact I'm in error in this ruling. With that, I'm going to let that statement stand as my Order on the record. You can accept that as final. Anyone that wishes to file a notice of appeal may do so based on the record in court here today.

Any further from the plaintiffs?

MR EPTING: Judge, if I understand, any further pleadings by the defendant is unnecessary? I mean, you're just saying ----

THE COURT: I'm just missing the action, yes.

MR. EPTING: All right, sir, that's all I wanted to know, sir.

THE COURT: Yes, the action is hereby dismissed in toto. Okay?

MR. EPTING: Thank you, Judge.

THE COURT: Anything further?

Mr. Epting, I'd like to say to you and your clients, those of whom may be present, I thought your argument was thought provoking, well prepared and outlined. I know

that's of little solace to you when you don't get the ruling that you'd like to have, but not only was it a well-prepared and thought-out argument, it was very thought provoking to the extent that I went back and read the cases a second time, so, thank you. Anything further?

MR. EPTING: Nothing

ALL: Thank you, Your Honor.

(Hearing concluded at 4:30 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

COUNTY OF CHARLESTON

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

/s/_____ January 17, 1997.

Gail Rubenstein Date

Transcriptionist

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-1118

CA-96-3786-2-23

ENTERED: SEPTEMBER 9, 1997.

INEZ BROWN CAROUCH; RONALD S. GAMON; RONALD H. MIDDLETON, SR.; JOHN C. MIZZELL; JOAN M. SOOY; ANN V. PADGETT; WILLIAM C. WILDER; JERRY LEE RICHARDSON; PARRIS L. WILLIAMS; JOHN DOE, an individual affected by the re-zoning decision; TOWN OF JAMES ISLAND.

Plaintiffs - Appellants

v.

SECRETARY OF STATE, in his official capacity

Defendant - Appellee

and

CITY OF CHARLESTON; ROBERT B. KIZER

Parties in Interest

On Petition for Rehearing with Suggestion for Rehearing In Banc

---

Appellants filed a petition for rehearing with suggestion for rehearing in banc and a motion for leave to file the petition out of time.

Judges Russell, Judge Hall and Judge Traxler, voted to deny the petition for rehearing.

The Court grants the motion for leave to file the petition out of time and denies the petition for rehearing.

Entered at the direction of Judge Russell for the Court.

No. 97-849

FILED
DEC 22 1997
CLERK

In The

Supreme Court of the United States

October Term, 1997

INEZ BROWN CROUCH; RONALD S. GARMON; RONALD H. MIDDLETON, SR.; JOHN C. MIZZELL; JOAN M. SOOY; ANN V. PADGETT; WILLIAM C. WILDER; JERRY LEE RICHARDSON; PARRIS L. WILLIAMS; JOHN DOE, an individual affected by the re-zoning; TOWN OF JAMES ISLAND,

Petitioners,

vs.

SECRETARY OF STATE, in his official capacity,

Respondent,

-and-

CITY OF CHARLESTON; ROBERT B. KIZER,

Parties in Interest.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Respondent, Secretary of State, in his official capacity, contends that the only question presented is properly stated as follows:

I. Were the lower courts correct in dismissing this action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine?

ARGUMENT

This appeal is nothing more than a direct appeal or collateral attack of an issue of state law that has been decided by the South Carolina Supreme Court. A federal court has no authority to exercise appellate jurisdiction over, nor may it overrule on collateral attack, the highest appellate court of a state. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303 (1983); *Atlantic Coastline R. Co. v. Brotherhood of Local Engineers*, 398 U.S. 281, 90 S. Ct. 1739 (1970); and *Rooker v. Fidelity Trust Co.*, 263 U.S. 403, 44 S. Ct. 149 (1923).

The *Rooker-Feldman* doctrine applies to claims for both injunctive and declaratory relief, and regardless of whether or not the state court action is final or proceedings in the state court are still ongoing. *Keen Corp. v. Cass*, 908 F.2d 293 (8th Cir. 1990). The purpose of the doctrine is to prevent precisely the type of "end run" that Plaintiffs have chosen here. If plaintiffs were unhappy with the decision of the South Carolina Supreme Court, their only option was to appeal to the United States Supreme Court. Petitioners did and were denied. *Glaze v. Grooms*, 324 S.C. 249, 478 S.E. 2d 841 (1996), *cert. denied*, 117 S. Ct. 1845 (1997).

Petitioners are asking the federal courts to tell an agency of the executive branch of state government not to follow the interpretation of state law by the South Carolina Supreme Court. This is nothing more than a craftily-drafted distinction with no substance. In *Stern v. Nix*, 840 F.2d 208 (3rd Cir.), *cert. denied*, 488 U.S. 326, 109 S. Ct. 77 (1988), the Third Circuit undid a federal plaintiff's complaint by stating that his general challenge to the constitutionality of a state court rule was

> simply a skillful attempt to mask the true purpose of the action, which essentially [was] to reverse the

> judicial decision of the Supreme Court of Pennsylvania, in contravention of Rooker-Feldman.

Id. at 212. Likewise, Appellants are trying to insulate themselves from a direct appeal of the South Carolina Supreme Court by cleverly inserting the Secretary of State ("the Secretary") in the middle of an attempt to hide their true intent. The South Carolina Supreme Court has already ruled that the incorporation of James Island was invalid; thus, the Town never legally existed.

Petitioners argue that

> [A]n award of the relief sought by these Appellants would leave the *Glaze* decision intact; it would simply prevent the State from implementing the decision in this case.

(Petition at 10-11). This is a distinction without substance. What Petitioners are really asking is to leave the *Glaze* decision as binding, but do not apply it to them. No matter what one calls it, this is nothing more than a direct appeal or collateral attack of the decision of the South Carolina Supreme Court.

The United States Court of Appeals for the Fourth Circuit reviewed the district court's dismissal for lack of subject matter jurisdiction *de novo*. (App. 4). Both courts agreed that the *Rooker-Feldman* doctrine barred the federal court from reviewing the decision of the South Carolina Supreme Court.

Respondent contends that the opinion of the Fourth Circuit, (App. 1-10), clearly articulates the reasons for denying Petitioner's writ. Petitioners have failed to show why this Court should grant the writ.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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